



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XB689

Pacific Island Pelagic Fisheries; False Killer Whale Take Reduction Plan; Trigger for the Southern Exclusion Zone Closure Met in 2021

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: In 2021, four observed mortalities or serious injuries (M&SI) of false killer whales occurred incidental to the Hawaii deep-set longline fishery within the U.S. Exclusive Economic Zone (EEZ) around Hawaii on January 18, 2021, March 26, 2021, April 17, 2021, and November 19, 2021. These M&SI met the established annual trigger of four observed M&SI for closing the Southern Exclusion Zone (SEZ) to deep-set longline fishing under the False Killer Whale Take Reduction Plan (Plan) regulations. In accordance with the Plan regulations a closure of the SEZ is required through the end of the fishing year. Because the injury determination for the fourth interaction meeting the trigger was not available until January 2022, the timeframe for closing the SEZ in 2021 had passed, and the SEZ was not closed. In accordance with the Plan regulations, the requirements for closure of the SEZ were met in 2021, therefore, if the trigger is met in 2022, the process for closure of the SEZ will follow the procedures described in the Plan regulations.

DATES: Comments on this notice must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0027 by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0027 in the search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), attention Diana Kramer, Protected Resources, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Diana Kramer, Protected Resources, NMFS Pacific Islands Regional Office, 808-725-5167, diana.kramer@noaa.gov; or Kristy Long, NMFS Office of Protected Resources, 301-427-8402, kristy.long@noaa.gov.

SUPPLEMENTARY INFORMATION: The Plan was implemented on December 31, 2012, pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of M&SI of the Hawaii pelagic and Hawaii insular stocks of false killer whales incidental to the Hawaii longline fisheries (77 FR 71260; November 29, 2012). The Plan, based on consensus recommendations from the False Killer Whale Take Reduction Team (Team), was implemented by regulation and created the SEZ, which would be closed to deep-set longline fishing if a certain number (trigger) of false killer

whale M&SI are observed incidental to the deep-set fishery in the EEZ. As described in the Plan regulations (50 CFR 229.37(d)(2)), the SEZ is bounded on the east at 154° 30' W. longitude, on the west at 165° W. longitude, on the north by the boundaries of the Main Hawaiian Islands Longline Fishing Prohibited Area and Papahānaumokuākea Marine National Monument, and on the south by the EEZ boundary (see Figure 1). An SEZ closure is triggered if, after expanding the number of observed M&SI, the Hawaii pelagic stock's potential biological removal (PBR) level has been exceeded. On December 15, 2020, NMFS closed the SEZ after four observed false killer whale M&SI within the EEZ around Hawai'i incidental to the Hawaii deep-set longline fishery, following the trigger calculations as defined in the Plan (85 FR 81184; December 15, 2020).

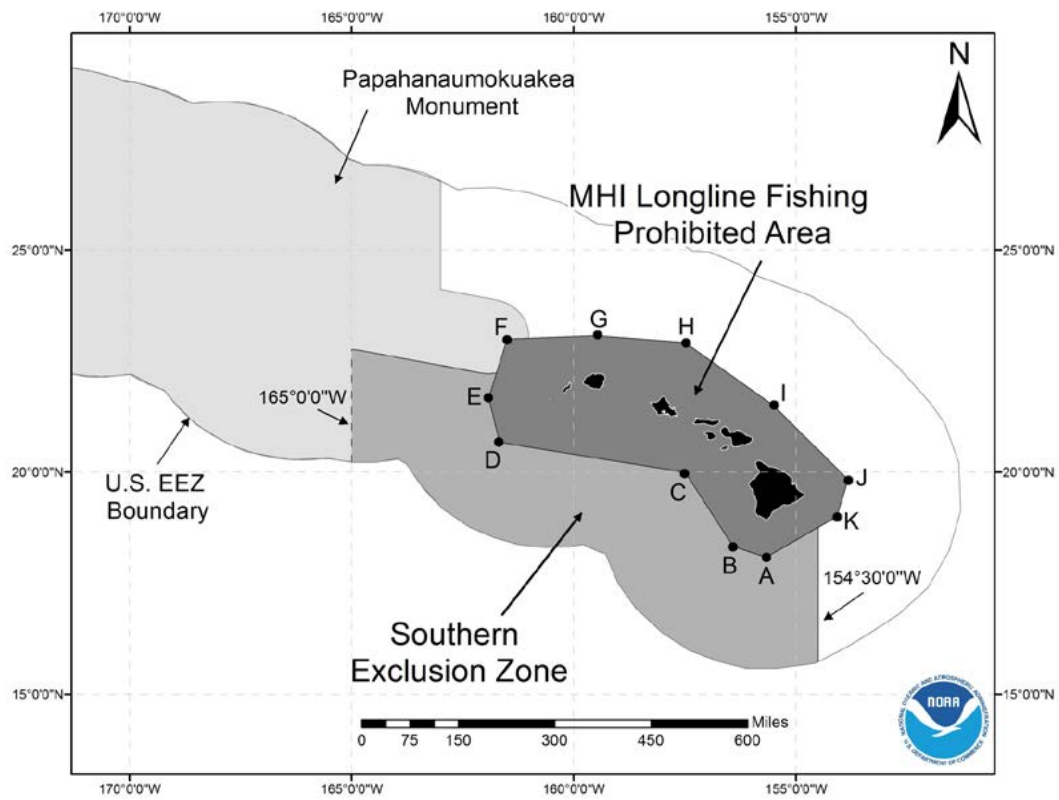


Figure 1. Southern Exclusion Zone

In 2021, NMFS-certified fishery observers documented four false killer whale interactions during deep-set trips inside the U.S. EEZ around Hawaii on the following dates: January 18, 2021, March 26, 2021, April 17, 2021, and November 19, 2021. Three of these interactions resulted in serious injuries and one resulted in a mortality. These four M&SI met the trigger for closure of the SEZ in 2021. NMFS has determined that the SEZ trigger (*i.e.*, four M&SI) has been met, and closing the SEZ to deep-set longline fishing is required until the end of the fishing year (December 31) as described in 50 CFR 229.37(e)(3). Under a plain reading of section 229.37(e)(3), NMFS applies the closure in the fishing year that the triggering M&SI occurs. Because the final injury determination for the fourth interaction meeting the trigger was not available until January 2022, the timeframe for closing the SEZ in 2021 had passed, and the SEZ was not closed in 2021. Therefore, the requirements for an SEZ closure under 50 CFR 229.37(e)(3) were met in 2021 and if the trigger is met in 2022, NMFS will follow the procedure for closing the SEZ until the reopening criteria are met as described in 50 CFR 229.37(e)(5).

Classification

Prior notice and comment is unnecessary because the take reduction plan final rule (77 FR 71259, November 29, 2012) that implements the procedures for closing the SEZ (codified at 50 CFR 229.37(e)) has already been subject to an extensive public process, including the opportunity for prior notice and comment. All that remains is to notify the public that the trigger for closing the SEZ under Plan regulations at 50 CFR 229.37(e)(3) was met in 2021, and that NMFS will proceed with the closure procedure under 50 CFR 229.37(e)(5) should the trigger be met in 2022.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: March 2, 2022.

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National Marine Fisheries Service.

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